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Attorneys for Defendants  
FENIX INTERNATIONAL LIMITED and  
FENIX INTERNET LLC.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARCELO MUTO, NOAH BREEZE,  
and all others similarly situated,

Plaintiffs,

v.

FENIX INTERNATIONAL LIMITED;  
FENIX INTERNET LLC,

Defendants.

CASE NO. 5:22-cv-02164-SSS-KK

**DECLARATION OF JACOB M.  
HEATH IN SUPPORT OF  
DEFENDANTS FENIX  
INTERNATIONAL LIMITED AND  
FENIX INTERNET LLC'S  
OPPOSED STIPULATION TO  
CONTINUE HEARING ON  
MOTION TO DISMISS**

Judge: Hon. Sunshine S. Sykes

I, Jacob M. Heath, declare as follows:

1. I am an attorney admitted to practice in the State of California and in the United States District Court for the Central District of California. I am an attorney at Orrick, Herrington & Sutcliffe LLP, and counsel for Fenix International Limited and Fenix Internet LLC in this action. I make this declaration based on my personal knowledge and review of company records maintained in the regular course of Fenix

1 International Limited and Fenix Internet LLC's business. I could competently testify  
2 to the matters set forth herein if called do so as a witness in court.

3 2. This action was initially filed in Riverside County Superior Court on  
4 October 10, 2022. Before service was attempted, a First Amended Complaint  
5 ("FAC") was then filed in Riverside County Superior Court on October 24, 2022.  
6 Defendant Fenix Internet LLC ("Fenix Internet") was served with the summons and  
7 FAC on November 4, 2022. Fenix Internet removed the case on December 5, 2022,  
8 thirty days after service. At that time, Defendant Fenix International Ltd. ("FIL")  
9 had not been served.

10 3. Following removal, the parties agreed on December 6, 2022, that FIL  
11 would authorize its counsel to accept service of the FAC in this matter in exchange  
12 for a stipulation to set the deadline for responsive pleadings to February 10, 2023.  
13 This Court granted a stipulation in accord with that agreement on December 8, 2022.

14 4. On January 11, 2023, the parties filed a stipulation agreeing to grant  
15 leave for the filing of a Second Amended Complaint ("SAC"), and setting the time  
16 for a responsive pleading to the SAC to be due March 10, 2023. On January 12,  
17 2023, the Court entered an order consistent with that stipulation.

18 5. On March 10, 2023, Defendants filed their Motion to Dismiss the SAC.  
19 That Motion was fully briefed on April 14, 2023. The hearing on the Motion is  
20 currently scheduled for April 28, 2023.

21 6. Meanwhile, on March 10, 2023—the same day that Defendants' Motion  
22 to Dismiss was filed in this action—another substantially identical action, entitled  
23 *Doe v. Fenix Internet*, was filed in Orange County Superior Court. That action was  
24 never served on Fenix Internet, and it was subsequently voluntarily dismissed on  
25 March 27, 2023, on the ground that it had been inadvertently filed in Orange County  
26 when the named plaintiffs were not residents of Orange County.

27 7. The *Doe* action was then refiled in Los Angeles County Superior Court  
28 on April 3, 2023, and the *Doe* Plaintiffs served the Complaint and summons upon

1 Fenix Internet on April 4, 2023. On April 12, 2023, a First Amended Complaint was  
2 filed in Los Angeles Superior Court, which added FIL as Defendant. The First  
3 Amended Complaint was served upon Fenix Internet on April 14, 2023. To date,  
4 FIL has not been served with any papers in the *Doe* action.

5 8. On April 20, 2023, Fenix Internet removed the *Doe* action to the U.S.  
6 District Court for the Central District of California. On that same day, Fenix Internet  
7 and FIL filed a Notice of Related Cases in this action, notifying the Court that the  
8 *Doe* action and this action presented a number of identical questions of law and fact.  
9 A copy of the Notice of Related Cases is attached hereto as Exhibit A. As set forth  
10 in the Notice of Related Cases, both the *Doe* action and this action: (1) name the same  
11 defendants (FIL and Fenix Internet); (2) allege that OnlyFans, the social media  
12 platform owned and operated by FIL, failed to clearly and conspicuously disclose  
13 that subscriptions to creators on the platform would automatically renew in violation  
14 of California law; (3) raise the question of whether a forum-selection clause in the  
15 OnlyFans Terms of Service requires the two actions to be brought in the courts of  
16 England and Wales; (4) raise the question of whether FIL and Fenix Internet—neither  
17 of which is domiciled in California—can be subject to jurisdiction in California; and  
18 (5) seek to represent the same California class. *See* Ex. A.

19 9. Per Local Rule 83-1.3.3, Plaintiffs have five days—until April 25,  
20 2023—to file any opposition to the Notice of Related Cases.

21 10. Once this case and the *Doe* action are related, Fenix Internet intends to  
22 file a Motion to Consolidate the two actions, pursuant to Federal Rule of Civil  
23 Procedure 42. Per Local Rule 6-1, and this Court's schedule for civil motion  
24 hearings, that Motion will not be heard at the earliest until May 26, 2023.

25 11. I declare under penalty of perjury under the laws of the United States  
26 that the foregoing is true and correct.

Executed on the 20th of April, 2023, in Menlo Park, California.

/s/ Jacob M. Heath

Jacob M. Heath